**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT PETITION No.16834 of 2007

Dated: 30.11.2007

Between:

Abbireddi Suryachandra Reddy and others.

… PETITIONERS

AND

The State of Andhra Pradesh,
rep. By its Secretary, Hyderabad, and others.

… RESPONDENTS

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT PETITION No.16834 of 2007

O R D E R:

This writ petition is filed for a writ of Mandamus to set aside proceedings dated 22.07.2007 of respondent No.2, whereby the objections of the petitioners for acquisition of land against the proposal to acquire their land are rejected.

The only grievance of the petitioners in this case is that respondent No.3, who is entrusted with the task of holding enquiry and who is delegated with such power under Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act') failed to give the petitioners the opportunity of personal hearing. I am not going into the other details of the case for the reason that if the petitioners succeed in convincing this Court that they were denied the opportunity of personal hearing, the impugned order will be liable to the set aside.

In the affidavit filed in support of the writ petition, the petitioners have categorically averred that in pursuance of the notice issued in Form III to file their objections by 12.09.2006, they sent their objections and that as they were also asked to appear for enquiry on 12.09.2006 they attended the office of respondent No.3 at 10.30 a.m. It is further averred that they were informed by the staff of respondent No.3 that the latter would attend the office at 11.30 a.m., that they waited at the office of respondent No.3 till 1.00 p.m. and that on being informed by the office staff that due to the other official work of respondent No.3, he is not attending the office and that they will be intimated about the next

date of enquiry later, they left the office of respondent No.3. They have further pleaded that to their surprise they have received impugned proceedings dated 22.07.2007 (wrongly mentioned as 27.10.2006 in the affidavit), whereby their objections were rejected.

In the counter affidavit filed by Sri K.Nageswara Rao, Revenue Divisional Officer, Kakinada, East Godavari District, which was signed on 15.11.2007, it is mentioned as under:

> "With regard to personal hearing, it is submitted that in the notice under Section 5-A of Land Acquisition Act itself, the opportunity of personal hearing was provided at the outset. But, the petitioners have not utilized the opportunity of personal hearing."

The petitioners filed a reply-affidavit, in which while reiterating their plea that they were present in the office of respondent No.3 on 12.09.2006, they have referred to the counter affidavit signed by the same officer on 27.12.2006 and filed in W.P.No.24415 of 2006, filed by the petitioners on an earlier occasion. In paragraph 7 of the said counter affidavit respondent No.3 mentioned as under:

> The contention of the Petitioners that the Respondents did not give personal hearing to the Petitioners is not correct. As per the directions of this Hon'ble Court notices were issued to the Petitioners under Section 5-A and the Petitioners have attended before the Land Acquisition Officer and raised objections and thus due opportunity was afforded to the Petitioners by the Respondents. After considering the objections by the Land Acquisition Officer, they have been duly rejected as they are not tenable. Hence the contention of the Petitioners that the objections of the Petitioners was not considered in proper manner is not correct. It is submitted that the Joint Collector has taken a decision on the 5-A enquiry. However, if the Hon'ble Court feels that the Joint Collector is not competent to issue an order on the objections raised by the Petitioners, the Hon'ble Court may be pleased to permit

the District Collector to consider the report of the Land Acquisition Officer, afresh and issue orders under Section 5-A on the objections filed by the Petitioners.

From the pleadings of respondent No.3 reproduced above, it is evident that he has come out with contradictory statements. In his counter affidavit filed in this writ petition he mentioned that though the petitioners were given an opportunity of personal hearing, they have not utilized the same and that they have filed copies of the objection through their messenger on the date of enquiry i.e., 12.09.2006. This statement is diametrically contrary to his statement made in the above mentioned paragraph 7 of his counter affidavit filed in W.P.No.24415 of 2006.

A responsible officer holding the office of Revenue Divisional Officer is expected to be careful and cautious in filing his affidavits in the Courts. Learned Assistant Government Pleader candidly admitted that respondent No.3 is not in the habit of preparing the minutes of the enquiry which is statutory under the provisions of Section 5-A of the Act. In the absence of any evidence whatsoever to show that the petitioners were personally heard on 12.09.2006 and in view of the contradictory statements as mentioned above contained in the counter affidavits of respondent No.3,

I am convinced that the opportunity of personal hearing was not given to the petitioners.

The writ petition is, therefore, allowed. The impugned proceedings dated 22.07.2007 are set aside. The respondents are, however, given liberty to hold enquiry afresh after giving opportunity of personal hearing to the petitioners before proceeding further.

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**C.V. NAGARJUNA REDDY, J**

30th November, 2007
ghn